

TESTIMONY OF
DAVID C. ROBERTS
MANAGER, WATER RIGHTS AND CONTRACTS
SALT RIVER PROJECT
to the
Hearing of the
SENATE COMMITTEE
ON INDIAN AFFAIRS
In support of S. _____
TO PROVIDE FOR THE
SETTLEMENT OF THE WATER
RIGHTS CLAIMS OF THE
ZUNI INDIAN TRIBE TO
SURFACE WATER AND GROUNDWATER
IN THE LITTLE COLORADO
RIVER BASIN, ARIZONA
JULY 18, 2002
WASHINGTON, D.C.

Mr. Chairman Inouye, Vice Chairman Campbell, and members of the Committee:

My name is David C. Roberts. I am the Manager of the Water Rights and Contracts Department of the Salt River Project (“SRP”), a large, multi-purpose reclamation project authorized and constructed in central Arizona under the Reclamation Act of 1902. SRP is composed of the Salt River Valley Water Users’ Association and the Salt River Project Agricultural Improvement and Power District. Pursuant to the Reclamation Act, as well as various contracts with the United States, the Association, a private water delivery organization, and the District, a political subdivision of the State of Arizona, operate six storage reservoirs and dams on the Salt and Verde Rivers in central Arizona. Water from these rivers is impounded in SRP’s storage reservoirs for subsequent delivery to municipal, industrial and agricultural water users in the Phoenix metropolitan area, where over half of the State’s population resides. SRP also provides power to more than 775,000 consumers in the Phoenix area, and in other rural areas of the State. Some of this power is generated through the operations of SRP’s reservoirs. The remainder is supplied primarily by coal-fired power plants either operated by the District or in which the District has an ownership interest.

One such plant owned and operated by the District is the Coronado Generating Station (“CGS”), located near St. Johns, Arizona, in the Little Colorado River Basin. CGS was constructed in the mid-1970s with a generation capacity of 785 megawatts. The District commenced operation of CGS in 1980. Today, CGS employs 206 people, approximately 20% of the work force in St. Johns. Electricity generated at CGS is used by consumers throughout SRP’s power service area, and accounts for approximately 20% of all electricity generated at SRP facilities.

Water for CGS is supplied by two wellfields located near the plant site. Water withdrawn from these wellfields for use at CGS totals approximately 10,500 acre-feet annually. The Little Colorado River is located approximately 7 miles west of CGS.

In 1984, Congress established the Zuni Heaven Indian Reservation on the Little Colorado River about 15 miles downstream from CGS. Congress enlarged the Reservation in 1990 to include additional lands on the Little Colorado River, near the two wellfields supplying CGS. The lands on the newly created Zuni Heaven Reservation had been used by the Tribe many years previously for traditional religious and cultural purposes. The lands and riparian areas encompassed by the current Zuni Heaven Reservation are considered sacred by the Tribe and the restoration and maintenance of the Little Colorado River and its riparian vegetation is integral to the Tribe's continued use of the lands for religious purposes.

The Tribe's ability to use the resources on the Zuni Heaven Reservation for religious and cultural purposes was threatened by reductions in groundwater levels and surface water flows in the Little Colorado River occurring for a variety of reasons over the past 100 years. Most of the current uses of groundwater and surface water from the Little Colorado, including SRP's pumping from wells to supply CGS, predated Congress' creation of the Zuni Heaven Reservation in 1984 and its expansion in 1990, and arguably would have priority over the Tribe's use of water from the Little Colorado River Basin during times of shortage. But the arguable seniority of these upstream water rights to those of the Tribe was called into question in 1994, when the United States, acting through the Justice Department, asserted a claim in the Little Colorado River Adjudication for the Zuni Heaven Reservation based on the Tribe's use of the lands since "time immemorial." This filing crystallized the already apparent conflict between the Tribe's water uses on the Zuni Heaven Reservation and those of the surrounding

communities, setting the stage for the water settlement negotiations between these parties, which commenced in 1997.

After five years of negotiations, the parties have reached a settlement, which is embodied in the legislation before this Committee today. The Settlement resolves all outstanding water related litigation between the Zuni Tribe and the other settling parties and settles, once and for all, the water rights of the Tribe to surface water and ground water in the Little Colorado River Basin. The Settlement also provides the Tribe with essential resources to restore and maintain the riparian areas on its Reservation that have been eroded over the past century. Certain integral components of the Settlement are discussed below.

First. Federal, State and local funding will be used for the Tribe's acquisition, on a voluntary basis, of upstream rights to surface water, construction and implementation of its riparian restoration project and for other purposes authorized by the Settlement Agreement. Water made available to the Reservation through these purchases will enable the Tribe to reestablish and maintain the wetland environment that previously existed within the Reservation, including restoring water to a sacred lake on the Reservation.¹ As part of the Settlement, SRP will provide the Tribe with \$1 million, to be used towards providing a water supply for the sacred lake, as well as for the re-establishment of riparian vegetation on the Zuni Heaven Reservation. Additionally, under a cooperative arrangement between the Tribe and the Arizona Game and Fish Department, the Department will spend \$5 million over the next 15 years to acquire upstream lands with irrigation rights or surface water rights alone, for inclusion in its ongoing Stream Rehabilitation Program. The purposes of this program are to provide habitat for

¹ A condition precedent to the enforceability of the Settlement is the Tribe's acquisition with these funds of either surface water rights, or options to purchase surface water rights, sufficient to provide at least 2,350 acre-feet annually to the Reservation for riparian restoration uses.

endangered, threatened or candidate species and other wildlife and to enhance stream flow. Up to 1,000 acre-feet of the water acquired by the Department under this arrangement will be transferred to the Tribe for instream uses on its Reservation.

Second. The Tribe and the other settling parties have stipulated to the Tribe's right to continue existing surface water uses on the Reservation, on lands held in trust for the benefit of the Tribe and on lands held in fee by the Tribe. The Settlement also recognizes the Tribe's right to 5,500 acre-feet of the unappropriated surface flood flows in the Upper Little Colorado River for wetlands, irrigation and cultural uses on the Zuni Heaven Reservation, as well as the Tribe's right to pump and use groundwater on the Reservation.

Third. The Settlement Agreement, and the proposed legislation before this Committee, authorizes the United States to take certain lands into trust for the Tribe. The lands to be taken into trust are located along the Little Colorado River, east of the Reservation, and are important components of the riparian restoration project to be undertaken by the Tribe under the Settlement. The taking of these lands into trust raised a number of contentious issues during the water settlement negotiations between the Tribe and local parties. Chief among these issues was the local parties' objection to any reduction in the existing, already small tax base for Apache County, which might ordinarily result from these lands having trust status. Through a delicately drafted set of conditions and limitations set forth in the Settlement Agreement, however, the parties were able to reach a compromise, permitting the taking of these lands into trust, while still assuring the continuation of the continuing county tax base.

Fourth. In exchange for these benefits to the Tribe, the Settlement provides a broad waiver of the Tribe's claims to groundwater and surface water from the Little Colorado River Basin, and permits the continuation of existing surface water and groundwater uses in the basin.

The Settlement also waives the Tribe's objections to future water uses within the Basin, with the exception of groundwater uses within a geographically defined area surrounding the Reservation, referred to as the "Zuni Protection Area." Groundwater uses within the Zuni Protection Area may be initiated, by separate agreement with the Tribe, subject to certain quantity limitations set forth in the Settlement.

Fifth. Pursuant to the Settlement, the Tribe and the United States will also enter into a separate, supplemental agreement with the District addressing the terms and conditions that apply to the District's withdrawal of groundwater for use at CGS, and providing for the monitoring of the effects of groundwater use at CGS on static water levels on the Reservation. Under its separate agreement with the Tribe and the United States, the District has agreed to refrain from drilling new or replacement wells within a geographically defined area between the Reservation and existing wellfields for CGS, in order to minimize the impacts of CGS wells on water supplies for the Reservation. The Tribe has reciprocally agreed to restrict its pumping of groundwater in an area referred to as the "Zuni Exclusion Area," in order to minimize impacts on water supplies for CGS. The Zuni Exclusion Area is generally located south of the Reservation in lands held in fee by the Tribe, and surrounds the SRP wellfields supplying CGS. In addition, the District will undertake a groundwater quality monitoring program in an effort to identify future water quality changes in the area near the Zuni Heaven Reservation lands.

The Zuni Indian Tribe and the other parties to this Settlement have worked diligently, and will continue to do so, to achieve the numerous compromises and contributions necessary for the settlement of the Tribe's water rights claims. The legislation before this Committee embodies the hard work of these parties to achieve a result that is beneficial to both the Tribe and local water users, enabling them to use a scarce resource cooperatively, with consideration

for the needs of both sides. The parties presently urge this Committee to bring the Settlement one step closer to completion by approving Senate Bill _____.

Thank you for your consideration of these views.